



LEGAL ALERT

PROFESSIONAL ACTIVITY OF NON-RESIDENT FOREIGN WORKERS

PRESIDENCIAL DECREE N.º 43/17

On 6 March 2017, Presidential Decree no. 43/17 (hereinafter “**Decree**”) was published in the National Official Gazette, I Series, no. 36, regulating the professional activity of non-resident foreign workers (hereinafter “NFW”). The Decree came into force on the day of its publication.

The new **Decree** repealed Decree no. 5/95 of 7 April 1995 and Decree no. 6/01 of 19 January 2001, thereby significantly reforming the legal regime applicable to NFWs. The provisions of the General Labour Law approved by Law no. 7/15 of 15 June 2015 (hereinafter the “**GLL**”) continues to be of subsidiary application.

Despite the enactment of the Decree, it is important to note that the concept of non-resident foreign worker remains unchanged.

The quota rule imposed on the procurement of foreign workers continues to apply, meaning at least 70% of the workforce is to be composed of national workers encompassing both Angolan and foreign resident workers and up to 30% of NFWs, regardless of the size of the company. A company with less than five workers is now bound by the quota rule, which was not the case under the previous legal framework. Nonetheless, in contrast to what happened in the past, the present Decree does not provide for the possibility of exceptions to the referred limits, meaning the proportion of NFWs will never be able to go beyond 30%.

Concerning the duration of the employment contracts, the prior minimum term was eliminated; consequently, it is now possible to enter into an employment contract for less than 3 months with a NFW. We also consider that the possibility of rehiring a NFW permitted under the previous regime after the expiry of the maximum limit of 36 months, under exceptional circumstances and upon satisfaction of the other prerequisites, is now precluded, since the current regime no longer provides for such exceptional circumstances.

In terms of registration, some changes were also made, namely the documents which must be attached to the request for registration. The time frame within which to present



such documents was also extended up to 30 days after beginning professional activity and the alteration of the calculation formula applied to the registration fee was also reformed.

Under the heading of equal treatment, NFWs must be classified, as to their qualifications, under the same terms as national workers. Still under the same heading, i to pay all amounts due or which will become due, as well as to maintain accommodation conditions when these are contractually provided for, and even to provide the worker with transportation back to the country of origin.

The company is also now expressly required to, at the moment of termination of the employment contract including cases where, for any reason, termination occurs before the term of the contract to inform in writing Migration Services in addition to the Employment Centre in its area.

Lastly, the amount of fines payable for a breach of this legal regime was also reviewed. For every non-resident, foreign worker affected by such breach, the fine imposed ranges from 7 to 10 times the average monthly salary of the company. When the breach is related to the quota rule, the fine will range between 5 and 10 times the average monthly salary of the company. Similar fines are payable for a breach of registry requirements, respective fees, and the obligations in accordance with the principle of equal treatment.

Due to the short-term repercussions on companies, we further highlight the following measures: (i) salaries are to be paid in Kwanzas; (ii) further supplements and other amounts paid, directly or indirectly, in cash or in kind, cannot correspond to more than 50% of the base salary; and (iii) the Angolan Central Bank (“BNA”) is to establish the amount that is transferable arising out of these employment contracts.